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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.              | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------------------|------------------|
| 10/776,576   | 02/11/2004  | Krzysztof Sowinski   | 760-102 DIV/RCE                  | 2790             |
| 23869 7590 04/02/2009<br>HOFFMANN & BARON, LLP<br>6900 JERICHO TURNPIKE<br>SYOSSET, NY 11791 |             |                      | EXAMINER<br>BUTLER, PATRICK NEAL |                  |
|  |             |                      | ART UNIT                         | PAPER NUMBER     |
|  |             |                      | 1791                             |                  |
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|  |             |                      | 04/02/2009                       | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/776,576 | <b>Applicant(s)</b><br>SOWINSKI ET AL. |  |
|                              | <b>Examiner</b><br>Patrick Butler    | <b>Art Unit</b><br>1791                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-11 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-11 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's Amendments filed 17 February 2009 include an addition of "radially expanding and longitudinal foreshortening" in line 3 of Claim 5 without an indication that the text is new. For purposes of examination, the Examiner assumes the text to be a typographical error and not intended to be present. For subsequent amendments, Applicant is requested to use claim markings for additions and deletions for changes to the immediate prior version (see MPEP § 714(II)(C)(B) and 37 CFR § 1.121(c)(2) - "All claims being currently amended must be presented with markings to indicate the changes that have been made relative to the immediate prior version.>").

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1791

Claims 1, 14, and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 11/026,657. Although the conflicting claims are not identical, they are not patentably distinct from each other because, with respect to instant Claims 1 and 18, Claim 12 of copending Application No. 11/026,657 claims providing an ePTFE tube, longitudinally expanding the tube, and transversely expanding the tube. With respect to instant Claim 14, Claim 2 of copending Application No. 11/026,657 claims providing an ePTFE tube, expanding the tube, and sintering the tube (heat treating the tube). The nodes and fibrils would have the same shape as claimed principally because the cited claims of Application No. 11/026,657 claim the same process steps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-11, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by House (US Patent No. 4,877,661).

With respect to Claim 1, House teaches making a PTFE tube (see col. 2, lines 55-60) by length stretching a PTFE tube that has longitudinal axes of the fibrils that are all substantially parallel (longitudinally stretching said polytetrafluoroethylene tube to

Art Unit: 1791

form an expanded polytetrafluoroethylene tube, wherein said expanded polytetrafluoroethylene tube is comprised of fibrils having a first length and oriented in a longitudinal direction of said expanded polytetrafluoroethylene tube and nodes having a first length and oriented in a circumferential direction of said expanded polytetrafluoroethylene tube) (see fig. 1 and col. 2, line 61 through col. 3, line 12).

House teaches biaxially stretching the tube (col. 2, line 61 through col. 3, line 12), which necessarily includes radial expansion (placing said expanded polytetrafluoroethylene tube circumferentially exterior to a longitudinal foreshortening and radially expanding mechanism; applying radial pressure from the longitudinal foreshortening and radially expanding mechanism; radially expanding and longitudinal foreshortening said expanded polytetrafluoroethylene tube over said longitudinal foreshortening and radially expanding mechanism), and compressing, in a direction parallel to but opposite to the direction in which it was originally expanded by stretching, over a mandrel, which would necessarily cause longitudinal foreshortening and radial expansion (placing the expanded polytetrafluoroethylene tube circumferentially exterior to a longitudinal foreshortening and radially expanding mechanism; applying radial pressure from the longitudinal foreshortening and radially expanding mechanism to increase said first length of said nodes of said expanded polytetrafluoroethylene tube to a second length in the circumferential direction; radially expanding and longitudinal foreshortening said expanded polytetrafluoroethylene tube over said longitudinal foreshortening and radially expanding mechanism) (see col. 3, lines 24-29 and col. 6, lines 47-53), which makes the fibrils wavy, which would require rotation at the nodes to maintain continuity from

Art Unit: 1791

node to wave to node (to shift said fibrils of said expanded polytetrafluoroethylene tube non-longitudinally by hingeably rotating said fibrils of said expanded polytetrafluoroethylene tube to form an ePTFE tubular structure with reoriented fibrils) (see fig. 2 and col. 4, lines 21-24). The compressing would necessarily cause radial expansion given the interior mandrel (see col. 6, lines 47-53) and lack of wrinkling or crimping (see col. 3, lines 24-29). The stretching does not result in length change of the fibrils since their only appearance change is being bent or wavy in microscopic representation (wherein said reoriented fibrils of said ePTFE tubular structure have a second length substantially equal to said first length of said fibrils of said expanded polytetrafluoroethylene tube) (see col. 4, lines 16-31 and figs. 1 and 2). Moreover, the nodes' lengths would necessarily expand during the radial pressure principally because they are within the same tube as claimed and subjected to the same steps as claimed.

With respect to Claim 2, the compression was done at 100-380 °C (200-720 °F) (between about 86 and 650 °F) (see col. 6, lines 57-63 and Table 1, col. Oven Temp. °C for samples 1-5).

With respect to Claim 5, the fibrils' shape would stay the same principally because they are within the same tube as claimed and subjected to the same steps as claimed.

With respect to Claim 6-11, House's method of making a PTFE tube would result in a final tubular structure whose longitudinal (Claims 6-8) and radial (Claims 9-11) expansion properties are as claimed principally because House's method uses the same steps as claimed to achieve the final structure.

Art Unit: 1791

With respect to Claim 14, House teaches that the stretched tube is heated while restrained to a temperature above its crystalline melt point and held there for a period of time (suspending and heating said PTFE tube after longitudinal expansion and prior to placing said tube on said expanding mechanism) (see col. 3, lines 3-12).

With respect to Claim 15, House's heating step would affect the tube's structural integrity as claimed principally because House's method uses the same steps as claimed to achieve the final structure.

With respect to Claim 16, House teaches making a PTFE tube as applied to Claim 1 above. Moreover, House teaches compression was done at 100-380 °C (200-720 °F) (see col. 6, lines 57-63 and Table 1, col. Oven Temp. °C for samples 1-5). House's method teaches reorienting the fibrils hingeably about said nodes (see figs. 1 and 3).

With respect to Claim 17, House teaches compression was done at 100-380 °C (200-720 °F) (see col. 6, lines 57-63 and Table 1, col. Oven Temp. °C for samples 1-5).

With respect to Claim 18, House teaches making an ePTFE tube as applied to Claim 1 above. House's method teaches reorienting the fibrils hingeably about said nodes (see figs. 1 and 3). House's method of making an ePTFE tube would result in a final tubular structure with reoriented fibrils whose nodal orientation has a greater length between said nodes as compared to said expanded polytetrafluoroethylene tube principally because House's method uses the same steps as claimed to achieve the final structure.

Art Unit: 1791

With respect to Claim 19, House teaches compression was done at 100-380 °C (200-720 °F) (see col. 6, lines 57-63 and Table 1, col. Oven Temp. °C for samples 1-5).

With respect to Claim 20, House's method of making an ePTFE tube would result in a final tubular structure whose reoriented fibrils are longitudinally straighter than said fibrils of said expanded polytetrafluoroethylene tube principally because House's method uses the same steps as claimed to achieve the final structure.

### ***Response to Arguments***

Applicant's arguments filed 17 February 2009 have been fully considered but they are not persuasive.

Applicant argues with respect to the 35 USC § 112, second paragraph, rejections. Applicant's arguments appear to be on the grounds that:

1) The 35 USC 112 rejections are obviated by amendments made.

Applicant argues with respect to the 35 USC § 102 rejections. Applicant's arguments appear to be on the grounds that:

2) Longitudinally stretched tubes of House are only compressed in a longitudinal direction. Thus, House does not teach radially expanding and longitudinal foreshortening.

3) House's teaching of longitudinal compression would not cause the tube to radially expand since the inner mandrel is the same radius as the ePTFE tube.

4) Since an instance of House's compression causes wrinkles, discussion of longitudinal compression causing radial expansion when wrinkles are not formed is made moot.



Art Unit: 1791

5) House's fibrils and nodes are contrary to the claimed requirement of node length and fibril length.

The Applicant's arguments are addressed as follows:

1) In view of Applicant's cancellation of Claim 4, the Examiner withdraws the previously set forth 35 U.S.C. 112, first and second paragraph, rejections as detailed in the Claim Rejections - 35 U.S.C. 112 section of the Office Action dated 15 October 2008.

2) As recited on page 9 of the Office Action mailed 15 October 2008:

- House teaches biaxially stretching the tube (col. 2, line 61 through col. 3, line 12), which necessarily includes radial expansion.
- Moreover, the compressing would necessarily cause radial expansion given the interior mandrel (see col. 6, lines 47-53) and lack of wrinkling or crimping (see col. 3, lines 24-29).

3 and 4) As recited on pages 9 and 10 of the Office Action mailed 15 October 2008:

- House teaches biaxially stretching the tube (col. 2, line 61 through col. 3, line 12), which necessarily includes radial expansion.
- Moreover, House's teaching of longitudinal compressing would necessarily cause radial expansion given the interior mandrel (see col. 6, lines 47-53), and House teaches a lack of wrinkling or crimping in some examples (see col. 3, lines 24-29).

Art Unit: 1791

- Moreover, the radial expansion portion of the claim does not exclude radial expansion due to compression. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., radial expansion not resulting from compression) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
- Moreover, even wrinkling in House's teaching of longitudinal compressing (see col. 3, lines 24-29) would provide for an increase in the average radius of the tube, which would be radial expansion.

4) House does teach an instance of not forming wrinkles since longitudinal compression to done in one instance "up to the point just prior to when it starts to become wrinkled" (see col. 3, lines 24-31). If House is held to teach wrinkling in other embodiments, disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 169 USPQ 423 (CCPA 1971).

5) As recited above:

The stretching does not result is length change of the fibrils since their only appearance change is being bent or wavy in microscopic representation (wherein said reoriented fibrils of said ePTFE tubular structure have a second

Art Unit: 1791

length substantially equal to said first length of said fibrils of said expanded polytetrafluoroethylene tube) (see col. 4, lines 16-31 and figs. 1 and 2).

5) Moreover, as recited above:

House's method of making an ePTFE tube would result in a final tubular structure with reoriented fibrils whose nodal orientation has a greater length between said nodes as compared to said expanded polytetrafluoroethylene tube principally because House's method uses the same steps as claimed to achieve the final structure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mon.-Thu. 7:30 a.m.-5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1791

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. B./

Examiner, Art Unit 1791

/Christina Johnson/

Supervisory Patent Examiner, Art Unit 1791